EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

M-83-11

March 30, 1983

100-13

MEMORANDUM FOR THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

FROM: DAVID A. STOCKMAN
DIRECTOR

SUBJECT: Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982

The following guidance is issued to explain how the disclosure provisions of the Debt Collection Act of 1982 (P.L. 97-365), affect agencies' implementation of the Privacy Act of 1974. This guidance supplements the Office of Management and Budget "Privacy Act Guidelines" issued on July 9, 1975 (Federal Register, Volume 40, Number 132, pp. 28949-28978). Additional supplements will be issued as needed.

Questions or comments may be addressed to the Office of Information and Regulatory Affairs, Information Policy Branch, Washington, D.C. 20503.

Attachment

OFFICE OF MANAGEMENT AND BUDGET

IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Supplemental Guidance on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974

1. General: The Debt Collection Act of 1982 and the Privacy Act of 1974.

The preamble to the Debt Collection Act of 1982 (P.L. 97-365) clearly states Congress' intent: "To increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of [such] debts." The "additional procedures" the Act provides cover a broad range, many of which are related to the technical aspects of financial management, e.g., collecting claims by administrative offsets, establishing interest rates and penalties on indebtedness, etc. Among these procedures, however, are those which authorize agencies to disclose the names, debt information, and (in certain instances) the addresses of individuals from agency systems of records. These disclosures are intended to let agencies take advantage of debt collection techniques and services commonly used by the private sector, e.g., creditworthiness checks, disclosure of bad debt information to credit bureaus, use of private debt collection agencies.

In order to facilitate these kinds of disclosures and promote the use of these techniques and services, the Debt Collection Act contains provisions which directly affect the primary statute controlling disclosures and use of information about individuals, the Privacy Act of 1974. The Debt Collection Act:

(a) Amends the Privacy Act of 1974 to provide a new general disclosure authority, subsection (b)(12), which lets agencies disclose personal information to consumer reporting agencies.

(b) Creates a statutory authority to satisfy the conditions the Privacy Act establishes under which agencies can make disclosures under subsection (b)(3): for a "routine use." The Privacy Act requires that such disclosures be compatible with the purpose for which the information was originally collected. The routine use disclosures

which the Debt Collection Act authorizes include disclosures of taxpayer mailing addresses in certain instances, as well as disclosures of debtor information to effect administrative or salary offsets.

(c) Creates statutory authority for agencies to collect the Social Security Account Number (SSN) from applicants in certain Federal loan programs.

(d) Amends the Privacy Act to exempt consumer reporting agencies from the "contractor" provisions of the Privacy Act.

This guidance will address each of the areas listed above in detail.

2. Definitions.

The following definitions apply to the terms used in these guidelines:

(a) All of the definitions in the Privacy Act (5 U.S.C. 552a) apply. Among them, the following are especially relevant:

(1) The term "'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;"

(2) The term "'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;"

(3) The term "'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected."

(b) The term "consumer reporting agency" is as defined in both the Fair Credit Reporting Act and the Debt Collection Act of 1982:

(1) "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports..."(15 U.S.C. 1681a(f)); or

(2) "Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies [as defined in 15 U.S.C. 1681a(f) above], or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies..."(31 U.S.C. 3711(d)(4)).

(c) The term "debt collection agency" means a person or organization with whom the head of an agency has contracted for collection services to recover indebtedness owed to the United States, (definition inferred from the wording of section 3(f)(1) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711) as added by the Debt Collection Act of 1982).

(d) The term "salary offset" means a deduction from the pay of a Federal employee or member of the Armed Forces, either active or reserve, to satisfy a debt owed the United States by that person. [5 U.S.C. 5514(a)]

(e) The term "administrative offset" means "the withholding of money payable by the United States to or held by the United States on behalf of a person to satisfy a debt owed the United States by that person..."(31 U.S.C. 3711).

3. Disclosing to Consumer Reporting Agencies Under Subsection (b)(12) of the Privacy Act of 1974.

The original text of the Privacy Act contained 11 provisions under which agencies could disclose personal information from systems of records without getting the subject's consent. The Debt Collection Act of 1982 amended the Privacy Act to create a new general disclosure authority as subsection (b)(12). This subsection permits agencies to disclose information from their systems of records, without obtaining the consent of the record subject, "to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f))."

Given the procedural steps agencies must take to disclose under section (b)(12), it is apparent that the Congress did not intend to create as broad an authority for disclosures under this section as in other general disclosure authorities, e.g., (b)(7). In its report on a companion bill, H.R. 2811, the House Committee on Government Operations explained that "consumer reporting agency disclosures shall not be treated as general routine uses that are made applicable to all systems of records....Disclosure

of information to a consumer reporting agency may be made from the primary system of records containing information about the claim....Disclosures may not be made indiscriminately from any system that happens to contain information about the debtor." [H. Rept. No. 42, 97th Cong. 1st Sess. 4].

To insure against indiscriminate disclosures, the Debt Collection Act places stringent limitations on the disclosure process affecting both the timing and content of the disclosure. The Act also places restrictions on who can receive the information and what that recipient can do with it. Thus:

(a) Timing of Disclosures Made Under Subsection (b)(12):

Such disclosures can be made only when a claim is overdue, and then, only after certain due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. It should be emphasized that agencies cannot use subsection (b)(12) to disclose information about a debtor who is currently meeting the terms of his debt. The disclosure must be authorized by an agency head or designee.

Note that a "claim" in this context means any obligation to the United States arising under any statutory authority except the Internal Revenue Code, the Social Security Act or the U.S. tariff laws. The Treasury Department, for example, could not use (b)(12) to disclose information about a taxpayer's delinquent account.

(1) Due Process Steps Agencies Must Take Before Disclosing:

Validation. The agency head or designee must have reviewed the claim and found it to be valid and overdue. This is also consistent with the requirements of the Privacy Act that before disclosing information from systems of records to third parties who are not subject to the Act's provisions, reasonable steps be taken to insure that the information is accurate, complete, timely and relevant for agency purposes (5 U.S.C. 552a(e)(6)). Agencies are reminded that the Privacy Act provides civil remedies for individuals who are harmed by wrongful agency actions in this area.

Notification. The agency head or designee must have sent the debtor written notice that the claim is overdue, that the agency intends to disclose information about the debtor to a consumer reporting agency, what that disclosure will consist

of, and what the debtor's rights are with respect to the claim. The fact that an agency does not have on file a current address for the individual does not excuse it from attempting to comply with this section. It is required to "take reasonable action to locate the individual prior to disclosing any information to a consumer reporting agency...."

Note that the Debt Collection Act provides authority for agencies to obtain taxpayers' mailing addresses from the IRS "for purposes of locating such taxpayer to collect or compromise a Federal claim against such taxpayer." [Paragraph (2)(A) of section 6103(m) of the Internal Revenue Code of 1954]

Debtor Inaction. The debtor must have failed to do one of the following: repaid the debt, or agreed in writing to reschedule the debt for repayment, or filed for a review of the claim.

Note that the wording of the Debt Collection Act appears to preclude the agency from making any disclosures to a consumer reporting agency if an individual files for review of the claim, and also if he or she appeals an initial decision about the claim.

Public Notice. Before making any disclosures under the authority of subsection (b)(12), agencies must have published a notice in the Federal Register identifying those systems of records from which they intend to disclose. This publication should be in the form of an amendment to an existing system of records notice or included in the text of the notice for a new system. For editorial consistency, it would be appropriate to locate Debt Collection disclosure notices at the end of the routine use section of the system notice; however, it should be noted that such disclosures are not routine uses (5 U.S.C. 552a(b)(3)), and that the notices required are not the same as those required for routine uses by section (e)(11) of the Privacy Act. Thus, the agency need not determine that disclosure meets the compatibility standard nor wait for public comments before making any disclosures. Nor should agencies submit reports to the Congress and OMB for review under subsection (o) of the Privacy Act. Because the Congress clearly intended that agencies identify each individual system from which disclosures could be made, agencies should refrain from publishing generic notices similar to "blanket" routine uses.

(b) Content of Disclosures Made Under Subsection (b)(12):

Unlike most of the other general disclosure authorities in the Privacy Act, subsection (b)(12) disclosures are restricted to a narrow range of very specific information. The only information that may be disclosed from a system of records to a consumer reporting agency is the individual's name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose. The legislative history of H.R. 2811 illustrates Congress' concern that disclosure be limited only to that information directly related to the identity of the debtor and the history of the claim: "Disclosures of...[other] information, even if used by the agency in connection with the claim, is not releasable. For example, if an individual must meet specific physical or economic conditions in order to qualify for a loan program, information about the conditions must not be disclosed. The fact that an individual has some qualifying condition may be revealed indirectly, however, through identification of the program under which the loan was made." [H. Rept. No. 42, 97th Cong. lst Sess. 4-5].

(c) Restrictions on Who Can Receive (b)(12) Disclosures:

In addition to limiting the amount and kind of information that may be disclosed pursuant to (b)(12), the Debt Collection Act also puts restrictions on who can receive this information. Disclosures may be made only to a "consumer reporting agency" as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 168la(f), or section 3(d)(4)(A)(ii) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(a)(3)(B). Further, before it can make any disclosures the agency is required to establish procedures for promptly notifying the consumer reporting agency that was the original recipient of the information of any substantive changes. The agency must also develop procedures for promptly updating its own information about the claim obtained from a consumer reporting agency. These procedures are designed to insure that the standards of accuracy, completeness, timeliness and relevance required by the Privacy Act are met.

(d) Safeguards Against Recipient Misuse:

The Debt Collection Act exempts consumer reporting agencies who receive records under the provisions of (b)(12) from section (m) of the Privacy Act, and thus

from criminal liability for misuse of information obtained under this disclosure authority. To insure against such potential misuse, however, agencies are required to obtain from consumer reporting agencies, prior to making any disclosures, "satisfactory assurances from each such consumer reporting agency concerning compliance by such...agency with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any other Federal law governing the provision of consumer credit information...." It would be appropriate to incorporate assurances to this effect in service contracts between Federal and consumer reporting agencies. It should be noted that section 8(a) of the Debt Collection Act specifically forbids agencies to disclose to consumer reporting agencies mailing addresses of taxpayers obtained from the Department of the Treasury for any purpose other than allowing the consumer reporting agency to prepare a commercial credit report. Agencies' use of IRS mailing addresses will be treated in detail below.

4. Disclosure of IRS Taxpayer Mailing Addresses to Third Parties to Collect Federal Claims.

(a) Disclosure Via Routine Use:

The Debt Collection Act amends section 6103 of the Internal Revenue Code of 1954 to permit the Secretary of the Treasury to disclose "the mailing address of a taxpayer for use by officers, employees or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711)." This disclosure provision is independent of the disclosure provision in subsection (b)(12) discussed above. It operates to provide the authority for the establishment of a "routine use" disclosure of this information pursuant to subsection (b)(3) of the Privacy Act. It does so by providing a statutory basis for agencies to assume the disclosure is compatible with the purpose for which the data was originally collected. A "routine use" disclosure, then, is the appropriate mechanism for transferring taxpayer mailing address information from both IRS' as well as agencies' systems of records. The wording of the Debt Collection Act indicates that such routine use disclosures could be made from IRS to Federal agencies; from IRS to agencies' debt collection agents directly; or from Federal agencies to their debt collection agents. Note, however that nothing in the wording of the Debt Collection Act authorizes agencies to share information among themselves. Thus, information obtained by one agency for its use in locating an

individual could not be furnished to another agency which seeks to locate the same individual for its own debt collection purposes.

The Department of the Treasury has published a routine use for the system of records containing taxpayer mailing addresses indicating their intention to make disclosures pursuant to this new provision in section 6103 of the Tax Code.

Agencies should likewise ensure that they have published routine uses for those systems of records from which they wish to disclose mailing address.

(b) Restrictions on Use and Redisclosure:

Agencies should be especially mindful that the Debt Collection Act places restrictions on their use and redisclosure of these addresses. In addition to the restriction discussed above against agencies' sharing information among themselves, the following limitations apply:

(1) A taxpayer's address may be disclosed to Federal agencies and their debt collection agents, but only "for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer...." Note that this wording prevents agencies from converting addresses obtained under this provision to other uses, e.g., the Department of Defense could not obtain a reservist's address in order to collect an overpayment and then use the address to update its ready reserve address file. These recipients are subject to the Privacy Act either by virtue of their Federal status or by the operation of contract.

(2) Addresses may be disclosed to consumer reporting agencies, but only to allow these agencies "to prepare a commercial credit report on the taxpayer for use" by the disclosing agency. Note that agencies should make sure they do not disclose addresses obtained from the IRS to consumer reporting agencies as part of the disclosures they make under subsection (b)(12), since disclosures made under (b)(12) are not "for the purpose of obtaining a commercial credit report." Rather, the reasons for disclosing under that provision are to encourage repayment of an overdue debt.

(3) To insure that agencies and their agents do not misuse the addresses obtained in this manner, the Debt Collection Act further amends section 6103 to

make the safeguards provisions of that section apply to these recipients as well. The effect of this provision is to bring into play the penalty provisions of the Internal Revenue Code, 26 U.S.C. 7213(a)(2).

5. Disclosing Debtor Information to Effect a Salary Offset or an Administrative Offset of a Debt.

(a) Establishing a Routine Use:

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies should publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act comprise the necessary authority to meet the Privacy Act's "compatibility" condition.

(b) Due Process Steps Prior to Actual Disclosure:

While providing the authority to make these kinds of disclosures, the Debt Collection Act establishes a series of procedural steps for agencies to follow to ensure due process, e.g., agency verification of the debt; written notice to the debtor; provision for debtor to examine agency documentation of the debt; provision for debtor to seek agency review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); opportunity for the individual to enter into a written agreement satisfactory to the agency for repayment. Only when all of the steps have been taken are agencies authorized to disclose pursuant to a routine use to effect an administrative or salary offset.

6. Collecting the SSN from Federal Loan Applicants.

(a) Statutory Authority to Collect:

Section 4 of the Debt Collection Act requires each Federal agency that administers an "included Federal loan" program to require applicants to furnish their taxpayer identifying number. For individuals, that number is their SSN (see section 6109 of the Internal Revenue Code of 1954). This provision satisfies the Privacy Act's requirement (in section 7) that agencies must have an authorizing Federal statute in order to condition the provision of a benefit (in this case the processing of a loan application) on the applicant providing his or her SSN.

Agencies should note that this section is statutory authority only for "included Federal loan" programs. These are programs that have been identified by OMB in a Federal Register notice, published on December 27, 1982. [47 FR 57595].

(b) Giving Individuals a Privacy Act Notice:

Even with statutory authority to collect the SSN, agencies must meet the notice provisions of section 7 of the Privacy Act. Specifically, application forms must contain the notice required by that section in which the individual is told:

(1) Whether the SSN disclosure is mandatory or voluntary.

Agencies should emphasize that while applying for the benefit is a voluntary act, once an individual decides to apply, he or she must furnish the SSN as part of the application.

(2) By what statutory authority such number is solicited.

Here, agencies should cite section 4 of the Debt Collection Act of 1982 (P.L. 97-365). Agencies are reminded, however, that for loan programs not identified as "included," by the OMB Federal Register notice cited above, agencies cannot rely on this section of the Debt Collection Act as authority to make provision of the SSN a condition of processing the application.

(3) What uses will be made of the SSN.

Agencies should be as specific as possible in describing these uses, e.g., "to match application data with state wage information in order to verify eligibility for benefits."

Although this notice is separate from and in addition to the general notice required by section (e)(3) of the Privacy Act, agencies should consider combining the two. Care should be taken however to create a notice in which both requirements are met.

7. Application of the "Contractor Provision" (Section (m)) of the Privacy Act to Consumer Reporting Agencies and Debt Collection Agencies.

Section (m) of the Privacy Act provides that when an agency contracts for the operation of a system of records to accomplish

an agency function, the agency must include in the terms of the contract provisions making the contractor responsible for complying with the Privacy Act. Section (m) also makes such contractors liable under the criminal provisions of the Privacy Act as "employees of the [Federal] agency."

(a) Consumer Reporting Agencies and Section (m):

The flow of personal information from agencies' systems of records to consumer reporting agencies and back could be construed to be the operation of a system of records to accomplish an agency function. To the extent that this process was prescribed by contract, it would trigger the provisions of section (m).

Section 2(b) of the Debt Collection Act of 1982 deals with this situation by adding a new subsection ((m)(2)) which provides that "a consumer reporting agency to which a record is disclosed under section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f)), shall not be considered a contractor for the purposes of this section."(5 U.S.C. 552a(m)(2)).

This exemption applies only within the context of disclosures made under subsection (b)(12) of the Privacy Act and subsection 3(d) of the Federal Claims Collection Act of 1966 as discussed above. Thus, when an agency contracts with a consumer reporting agency with the intent of disclosing personal information to it under the provisions of subsection (b)(12) and in compliance with section 3(d) of the Claims Collection Act, the terms of the contract do not have to contain provisions subjecting the contractor to the Privacy Act and the contractor is not liable under the criminal provisions of the Act as an agency employee.

(b) Debt Collection Agencies and Section (m).

Note by contrast, that in establishing contracts for debt collection services, the wording of the Act specifically provides that these contractors "shall be subject to section 552a of title 5, United States Code, to the extent provided in subsection (m) of that section...." Agencies should ensure that they have published systems of records which cover the activities of their debt collection agents.